August 25, 2008

Mary Cottrell, Secretary
Department of Public Utilities
One South Station, 2nd floor
Boston, MA 02110

Re: State Gas Company, D.T.E. 04-39; Berkshire Gas Company, D.T.E. 04-38; Cape Light Compact, D.T.E. 07-47; Fitchburg Gas and Electric Company d/b/a/ Unitil, D.T.E. 05-53, D.P.U.08-30; Massachusetts Electric Company, Nantucket Electric Company d/b/a/ National Grid D.P.U. 08-8; New England Gas Company – Fall River Division, D.T.E. 04-42; New England Gas Company – North Attleboro Division, D.T.E. 04-43; NSTAR Electric Company, D.P.U. 08-10 NSTAR Gas Company, D.T.E. 04-37, D.P.U. 08-36

Dear Secretary Cottrell:

Please find the enclosed Comment of the Attorney General to be filed in the above referenced dockets. Please contact me if you have any questions.

Thank you.

Sincerely,

Jamie M. Tosches

cc: service list

**COMMONWEALTH OF MASSACHUSETTS**
**DEPARTMENT OF PUBLIC UTILITIES**

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| Bay State Gas Company, D.T.E. 04-39; Berkshire Gas Company, D.T.E. 04-38; | ) |
| Cape Light Compact, D.T.E. 07-47; Fitchburg Gas and Electric Company d/b/a/ | ) |
| Unitil, D.T.E. 05-53, D.P.U.08-30; Massachusetts Electric Company, Nantucket | ) |
| Electric Company d/b/a/ National Grid D.P.U. 08-8; New England Gas Company | ) |
| – Fall River Division, D.T.E. 04-42; New England Gas Company – North | ) |
| Attleboro Division, D.T.E. 04-43; NSTAR Electric Company, D.P.U. 08-10 | ) |
| NSTAR Gas Company, D.T.E. 04-37, D.P.U. 08-36 | ) |
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# COMMENTS OF THE ATTORNEY GENERAL

Respectfully submitted,
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August 25, 2008

## I. INTRODUCTION

On July 16, 2008, the Department of Energy Resources ("DOER") filed a letter with the Department of Public Utilities ("Department") requesting consideration of an immediate increase in spending for energy efficiency programs targeted at residential heating end-uses. DOER stated in the letter: "we must do all we can to help residents cope with what will likely be high heating bills this winter." *July 16, 2008 Letter from Division of Energy Resources Commissioner Phil Giudice to Department of Public Utilities* ("DOER Letter"). On July 25, 2008, the Department issued a letter agreeing with DOER and proposing to require that all energy efficiency Program Administrators increase spending for residential heating programs effective as soon as feasible in order to prepare for the upcoming winter season. In its July 25 Letter, the Department stated that it "proposes to limit the funding increases to residential and low-income programs at this time, in order to focus on the social costs and health risks associated with potential for increasing failure of residential customers to meet their winter heating needs." *July 25, 2008 Letter to Stakeholders from Department of Public Utilities* ("DPU Letter"). In its letter, the Department specifically directed the utilities to file proposals for increased spending targeting residential heating end-uses. It also listed eight categories of detail and stated that the utilities should include this information in the proposals. For example, it stated that utilities should provide information "on the additional dollars the company projects it can spend in a cost-effective manner energy efficiency." *Id.*

On July 29, the Department discussed issues and concerns that Program Administrators, the Attorney General's office, and non-utility parties may have with implementing the funding increases at a technical conference. There, the Attorney General's office expressed its support for increasing energy efficiency programs to help reduce this winter's heating bills for residential and low-income customers by offering additional energy efficiency programs and services to those customers. However, the Attorney General's office raised concerns regarding both the process by which spending increases would be reviewed as well as the overall cost that would get collected from customers to fund the increase, but otherwise deferred comment until specifics of proposals could be reviewed. The utilities submitted their proposals on August 15 within each company's energy efficiency docket.[1] The Attorney General's office now submits this as its comment on all of the companies' proposals.

## II. THE PROPOSALS GO BEYOND THE DEPARTMENT'S SCOPE, FAIL TO PROVIDE THE DETAIL THE DEPARTMENT REQUIRED AND RAISE SIGNIFICANT PROCEDURAL AND SUBSTANTIVE ISSUES.

The Attorney General fully supports increased energy efficiency to reduce low-income and residential customer heating bills for this winter while avoiding any unnecessary increases in collections from customers over the 2008 winter heating season when heating bills are expected to soar. Rising natural gas, electricity and oil prices pose a potential crisis this winter and increased energy efficiency focused on reducing heating bills for low-income and residential customers is sorely needed. The utility proposals, however, present significant problems that must be addressed by the Department promptly so that heating-related energy efficiency can be expanded in time for the 2008 winter heating season.

The Department requested that utility Program Administrators file proposals "containing revised 2008 program budgets that will allow for the implementation of the maximum achievable level of cost-effective expenditures on residential heating programs for the remainder of 2008."

[1] All utilities have submitted proposals with exception to Western Massachusetts Electric Company ("WMECo"), KeySpan Energy Delivery New England d/b/a National Grid ("KeySpan"), and Blackstone Gas Company. WMECo failed to submit a proposal to supplement the 2008 budget for the customer funded energy efficiency programs it administers because it has yet to file a 2008 budget with the Department, and states it will submit both budgets in the near future. KeySpan already received approval of an increased budget for 2008 energy efficiency programs in D.P.U. 07-104.

DPU Letter. It directed the utilities to provide information on eight specified categories of detail in their proposals. It is particularly important for companies to provide this detail because the purpose here is to help residential customers deal with winter 2008 heating costs, and such detail is necessary to ascertain whether the proposals will, in fact, help customers in this way. These proposals were expected to defray winter heating costs through energy efficiency measures that reduce the amount of energy needed to heat residential customers' homes.

Although the utilities submitted proposals on August 15 that increase funding for energy efficiency programs, the proposals also go well beyond the scope set out by the Department. Some proposals include additional spending on energy efficiency programs that have little to do with reducing the heating costs for residential customers and others make significant program changes or additions that require substantial further review. Moreover, most proposals disregard the Department's directive to provide details on the level of proposed budget increases, number of additional customers that would receive energy efficiency incentives, products and services, and the reductions in bills customers are likely to realize. Likewise, because of their complexity, certain proposals raise significant substantive and procedural issues that must be addressed. For example, two of the proposals call for tariff changes that require the Department review the changes within a G.L. c. 164, § 94 proceeding prior to the approval of the tariffs.[2] Other proposals submitted by electric utilities may require spending beyond available system benefits charge funds triggering detailed review under the requirements set out in the Green Communities Act, Chapter 169 of the Acts of 2008 ("Green Communities Act").

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[2] NSTAR Electric Company proposed a tariff change; however, the company recognized the importance of expediting review of the proposals and explained it did not necessarily need approval of its tariff now. *See National Grid Electric*, D.P.U. 08-8, Aug. 15 Proposal, Filing Cover Letter, p. 2. Fitchburg Gas and Electric Company d/b/a Unitil, submitted a tariff proposal but did not appear to specify whether it sought approval now, therefore, it is assumed it does seek approval. *Fitchburg Gas and Electric Company*, D.T.E. 05-53, D.P.U. 08-30 Aug. 15 Filing Cover Letter. Pp/ 2-3,

Here, the Department indicated its intent to conduct an expedited review of the proposals to ensure that programs can be implemented in time for the 2008 winter heating season. To allow the Department to do this within its statutory obligations and framework, the proposals should have been targeted, simple and in conformance with the Department directives laid out in its July 25 Letter. Utilities' disregard for the Department's directives complicate what was intended to be a quick and simple review of targeted low-income and residential heating program increases.

*A. Proposals Go Well Beyond Reduction of Heating Bills for Low-Income and Residential Customers During this Winter.*

A number of utilities submit proposals that provide for additional spending and program enhancement for programs that have little to do with residential heating costs. Bay State Gas Company ("Bay State") and Berkshire Gas Company ("Berkshire") submit proposals that include budget increases for commercial and industrial energy efficiency programs.[3] NSTAR Gas Company ("NSTAR Gas") and NSTAR Electric ("NSTAR Electric"), ("collectively NSTAR"), note that this should not be done because of the lead time needed to have an impact. *See NSTAR Gas Company*, D.P.U. 04-37/D.P.U. 08-36, p. 12; *NSTAR Electric Company*, D.P.U. 08-10, Test., pp. 10-11 . Also, Massachusetts Electric Company and Nantucket Electric Company d/b/a/ National Grid ("National Grid") propose a $1 million increase for Small Businesses. *See Massachusetts Electric Company and Nantucket Electric Company d/b/a/ National Grid ("National Grid")*, D.P.U. 08-8, Aug. 15 Proposal, Filing Cover Letter, p. 1. Other utilities, such as Cape Light Compact ("Cape Light") and NSTAR Electric and NSTAR Gas, submit proposals that contain increases for residential programs that have little to do with

[3] Bay State Gas Company states that it proposes an annualized 32 percent increase in its C&I budget. *See Bay State Gas Company*, D.T.E. 04-39, Aug. 15 Proposal, Petition, p. 11 and Test., p. 15. Berkshire also proposes a budget increase for such programs, but for 2009, not 2008. *See Berkshire Gas Company*, D.T.E. 04-38, Aug. 15, 2008 Proposal, Test., pp. 8-9.

heating costs, *e.g.* increases for marketing activities, lighting rebates, appliance rebates and administrative costs.[4] *See NSTAR Electric Company*, D.P.U. 08-10, Aug. 15 Proposal, Test. p. 8 (proposing budget increases in progams that offer a mix of heating related and non-heating related offerings, *e.g.* marketing, lighting, and appliance programs without making distinctions); *NSTAR Gas Company*, D.P.U. 04-37/D.P.U. 08-36, Aug. 15 Proposal, Test. pp. 7, 12-13 (proposing to spend $30,000 for Market Transformation, and proposing to increase outreach); *Cape Light Compact*, D.T.E. 07-47, Aug. 15, 2008 Proposal, p. 6 (proposing to increase spending by $357,000 for marketing and outreach). If companies seek to increase outreach and marketing, they must demonstrate that the added expenditures are related to heating. Finally, almost all the gas utilities seek to add a new rebate for combined high efficiency space conditioning and water heating units and propose to increase financial incentives that are given to commercial and industrial customers for customer energy efficiency programs.

According to the terms set out in the Department's July 25 Letter, it sought additional spending proposals for low-income and other residential programs that would reduce heating costs for residential customers. The Department should reject those portions of the proposals that will not provide relief or assistance to low-income and other residential customers this winter.

### *B. Utilities Have Failed To Provide the Detail the Department Requested.*

In its July 25 Letter, the Department specifically required the utilities include the following eight categories of detail within their proposals:

- energy efficiency programs that are targeted at residential heating end-uses;
- additional dollars the company projects it can spend in a cost-effective manner;

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[4] Although NSTAR clearly stated that it intended to increase marketing activities, other companies' budgets are not clear enough to make this determination, but they appear to allow for such an increase. Also, there is no way to determine what extent proposals increase administrative costs.

- constraints that limit the additional dollars the company projects it could spend cost-effectively;
- additional number of residential customers that will be served;
- additional kilowatt-hour, kilowatt, therms or mmbtu savings that will be achieved;
- dollar savings on monthly bills that additional participants will be expected to realize;
- effect on the cost-effectiveness of the applicable programs; and
- company's proposed mechanism for recovery of incremental expenditures.

DPU Letter. It is particularly important for companies to provide this detail because the purpose here is to help residential customers deal with winter 2008 heating costs, and such detail is necessary to ascertain whether the proposals will, in fact, help customers. Despite clear Department guidance, however, nearly every proposal fails to provide all of this information. As a result, it remains unclear as to how much of the additional funds will be spent on areas that can impact Massachusetts customers' heating costs, the extent that customers will benefit and whether all proposed programs will be cost-effective.

The NSTAR submits the most comprehensive proposals, demonstrating that the data and information could be assembled within the time constraints allotted.[5] It submits proposals that provide detailed information with respect to almost all eight categories of detail requested by the Department. The budget information provided in these proposals, however, remains deficient. Although the company's proposals do state how much more it will be spent for each program, the proposals do not make clear how much additional monies will be spent on administrative costs and other program cost categories and should demonstrate this in order to obtain approval. *See NSTAR Gas Company*, D.T.E. 04-37, D.P.U. 08-36, Aug. 15 Filing, pp. 5-8 and *NSTAR Electric Company*, D.P.U. 08-10, Aug. 15 Filing. Connor Testimony ("Test")). p. 6, and Supplemental Energy Efficiency Plan, pp. II-2, II-3. Administrative costs should not increase all that much, and proposals should confirm this. Also, the NSTAR's proposals do not identify the

[5] Smaller companies may have more of a challenge in doing so.

additional numbers of customers that will be served, and instead provides percentages. *See NSTAR Gas Company*, D.T.E. 04-37, D.P.U. 08-36, Aug. 15 Filing and *NSTAR Electric Company*, D.P.U. 08-10, Aug. 15 Filing. Connor Test. p. 8. It remains unclear as to how many more customers will receive energy efficiency benefits.

Bay State and Berkshire submit proposals that fail to provide information in a number of the reporting categories requested by the Department.[6] These companies did not identify the additional dollars that they would spend, and, instead, provided revised total program budgets along with an estimation of the overall percentage increase in budgets. *See e.g., Bay State Gas Company*, D.T.E. 04-39, Aug. 15 Filing, Testimony p. 11. and Schedule 5 (providing a total budget by program, and estimating the increase as 24 percent increase for all residential and low-income programs); *Berkshire Gas Company*, D.T.E. 04-38, Aug. 15 Filing, Schedule 5 (providing total program budgets and requesting residential and industrial budgets increase of 25%). Neither company provides information on potential constraints that limit the expansion of programs, additional number of customers that would be served, and both stated that they need not provide any additional cost benefit analysis than what was provided last June. The companies justified the latter by simply stating their overall cost-benefit ratio is robust, and that the analysis will not be impacted or significantly changed, but neither provided any additional information to support this. *See Bay State Gas Company*, D.T.E. 04-39, Aug. 15 Filing, Test. pp.15-16 and Schedule 6; *Berkshire Gas Company*, D.T.E. 04-38, Aug. 15 Filing, Test. p. 9. Berkshire provided monthly bill savings estimates for its R-3 Class of approximately $35 – 50 per month, but Bay State did not.

[6] Both Companies provided adequate cost recovery information given that they will rely on the existing framework for recovery.

With respect to the remaining electric companies, Fitchburg Gas and Electric Company d/b/a Unitil ("Fitchburg"), Cape Light and National Grid offer proposals that contain varying levels of detail. National Grid's proposal provide detailed information on the additional energy efficiency program spending per program, however, it did not provide details on incremental spending by program cost categories, *e.g.* administrative costs. *See Massachusetts Electric Company*, *Nantucket Electric Company d/b/a/ National Grid*, Aug. 15 Filing, Cover Letter, p. 1, and Appendix A Supplement pp. 2-3. The Company included a recalculated cost-benefit analysis along with its proposal, *id.*, Appendix A, Supplement p. 1, however, it provides no information on the constraints on program expansion, the number of customers that will be served by program, or dollar savings that customers will experience each month. *See generally id.* Finally, it states that it seeks to recover costs along with its 2009 energy efficiency plan, *id*., Filing Letter, p. 1, however, as discussed in Section F below, it assumes some risk for recovery.

Fitchburg Electric and Gas and Cape Light did not identify a value for the additional dollars that they propose to spend on energy efficiency programs that target heating end-uses. Instead, Fitchburg provided percentages that represent the overall increase in funding and Cape Light provided total increases. *See Fitchburg Gas and Electric Company*, D.T.E. 05-53, D.P.U. 08-30 Aug. 15 Filing (submitting total program budgets and approximating an overall increase in current spending activity for all residential programs of 30%); *Cape Light Compact*, Aug. 15 Filing, Petition, pp. 6-7 and Appendix B (stating total increases of $260,000 and $97,000 for residential and low-income programs, respectively). Fitchburg and Cape Light also propose to rely on problematic cost recovery tariffs as discussed fully below. Fitchburg's proposal also fails to discuss constraints on program expansion given that it simply stated that it sees no constraints at the proposed level of funding, nor did it provide monetary savings customers are expected to realize or information about the effect its proposal will have on program cost-effectiveness. *Fitchburg Gas and Electric Company*, D.T.E. 05-53, D.P.U. 08-30 Aug. 15 Proposal, Filing Cover Letter and Attachment C. It simply states that the proposal will not have an effect on cost-effectiveness, however, did not provide supporting data. *See id.* Cape Light's proposal fails to discuss constraints on program expansion, and, although it provided a percentages monthly savings and a total number for the additional number of customers served; this is not adequate because there is no way to determine the dollar savings customers are expected to realize or how many customers buy program will be helped. *See Cape Cod Light Compact*, D.T.E. 07-47, Aug. 15 Proposal, Petition pp. 7-8 and Appendix D.

With respect to New England Gas, it did not provide a budget for the additional spending, and only provided a total budget. *See New England Gas Company*, Aug. 15 Proposal, 2008, Exhibit 1 and Exhibit 5; and *New England Gas Company Attleboro*, Aug. 15 Proposal, Exhibit 1 and Exhibit 5. The Company was deficient in a number of areas. The Company very briefly discusses constraints, but not in a meaningful way. It states that it expects that the number of customers served will rise by 15 percent, but does not show numbers of customers by programs. *New England Gas Company Fall River, D.T.E. 04-42*, Aug. 15 Proposal, Test. p. 12;*New England Gas Company Attleboro*, D.T.E. 04-43, Aug. 15 Proposal, Test., p. 11.

The Department should require all companies with deficient proposals to immediately supplement their proposals to provide the data and information as required for all eight categories. This information is necessary to ensure that utilities are spending additional funds on programs targeted on end use heating and it is needed to evaluate the direct benefits that proposals will provide customers. For instance, it is very difficult to discern what the funding will be spent on without detailed information by program and spending category, *e.g.*

administrative costs, or how many customers and to what extent they will benefit without detailed information about added customers served and bill savings estimates. Also, the guidelines provided in D.T.E. 98-100 require companies to demonstrate cost-effectiveness, and here, a number of companies did not do so, an instead, relied on analysis conducted that do not take into account the proposed additional spending.

Understanding the direct benefits is also especially important given that customer's rates may need to be increased to fund these programs through recovery of the cost of these programs, and through recovery of lost based revenues. Moreover, utilities stand to profit from increased spending because they have included requests to earn shareholder incentives on the increased energy efficiency programs.[7]

### *C. Utilities Have Proposed New Programs and Program Changes That Need Further Review and Investigation.*

The utility proposals seek to establish new energy efficiency programs and make numerous changes to existing programs. The most problematic requests include increases to low-income program eligibility and establishment of new rebate programs. Nearly all the gas and some electric companies propose to increase the low-income eligibility for some or all energy efficiency programs from 60 percent of the state's medium income to 80 percent of the state's medium income.[8] Low-income energy efficiency eligibility is a subject of a separate and pending Department docket. *See generally Investigation into Issues Affecting Low-Income Customers*, D.P.U. 08-4. This truncated proceeding should not be used to preempt the Department's full review of the complexities associated with increasing low-income eligibility

[7] Although the Department allows utilities to earn shareholder incentives, utilities could do their part by forgoing these incentives this winter to help customers. No utility has offered such a benefit to customers.

[8] *Bay State Gas Company,* D.T.E. 04-39, Aug. 15 Proposal, Attachment A, Schedule 3, p. 2; *Berkshire Gas Company,* D.T.E. 04-38, Attachment B, Schedule 3; *NSTAR Electric Company*, D.P.U. 08-10, Aug. 15, 2008, pp. IV-3, IV-6.; *NSTAR Gas Company*, D.P.U. 04-34/D.P.U. 08-36, Aug. 15 Proposal, 2008, Exhibit 3, p. 3; *Cape Cod Light Compact,* D.T.E. 07-47, Aug. 15, 2008, Appendix A, p. 4.

thresholds. *See id*. Likewise, all gas companies propose to establish new rebate programs for residential and commercial customers for high efficiency space water heating and hot water boilers. In addition, NSTAR Gas requests approval for implementation of a heating system early retirement pilot incentive program to encourage landlords to replace heating systems with certain systems designated as high efficiency. NSTAR Gas Company, D.T.E. 04-37/D.P.U. 08-36, Aug. 15 Proposal, Exhibit 3, Supplement, pp. 1-3. Before new programs are established, they must be further investigated to identify whether they are cost-effective. The merits of such programs aside, there is no evidentiary basis to make this determination here.

The instant proceeding is not the appropriate forum to be introducing new programs or making substantial changes to existing programs. There is not an adequate time to review program changes or additions so that they can be implemented for the winter. The Department should deny any requests for changes in programs or establishment of new programs for the remainder of 2008 and allow utilities to include such proposals in their 2009 filings. Of course, any utility is free to adopt new pilot programs or other initiatives that may promote energy efficiency and save their customers money if a utility wishes for shareholders to pay for them, but until that has been review to ascertain whether the pending proposals are cost-effective pursuant to D.T.E. 98-100 and Department precedent, the Department should not approve them regardless of the statements in utility proposals here.

*D. Berkshire Proposes to Make Up for Overspending.*

Berkshire proposes to expand program funding to make up for overspending. *Berkshire Gas Company*, D.T.E. 04-38, Aug. 15 Proposal, Test. pp. 8-9. Approximately 88% of that additional funding will be spent on commercial and industrial customers.[9] NSTAR Gas recently

[9] Compare *Berkshire Gas Company*, D.T.E. 04-38, Exhibit 5, Budget for May 1, 2008 through April 30, 2009, total Residential and Low Income, $697,427 to Exhibit 1, Report for May 1, 2007 through April 30, 2008, total

submitted a proposal to increase its funding to make up for overspending which has been docketed, and is now under investigation before the Department in a separate proceeding. *See generally NSTAR Gas Company*, D.P.U. 08-36. Berkshire should make a similar filing. The Department should reject Berkshire's proposal for failing to file in the appropriate form, and require it to file a new proposal focused on low-income and residential heating.[10]

### *E. The Funding of the Electric Companies' Proposals Raise Significant Procedural and Substantive Issues.*

The proposals of the electric utilities include little if any detail about the source of additional funding. Prior to the passage of the Green Communities Act, a cap on funding for electric energy efficiency programs existed and all funds were collected from customers through the system benefits charge ("SBC") pursuant to statute. The Green Communities Act allows for additional spending on energy efficiency programs administered by electric utilities, and sets out specific 'sources' of funding: collections from customers through a SBC, revenues from the Regional Greenhouse Gas Initiative ("RGGI") auctions, proceeds from the Forward Capacity Market ("FCM") as well as the ability to collect additional monies from customers above and beyond what was collected through the SBC. Green Communities Act, ch. 169, § 11 (2008). With respect to the additional monies to be collected from customers, the Green Communities Act states the following: "Other funding as approved by the department [may be collected from customers] after consideration of: (i) the effect of such increases on residential and commercial customers; (ii) the availability of other private or public funds; and (iii) whether past programs have lowered the cost of electricity to residential and commercial customers." *Id.* Companies

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Residential and Low Income, $640,904. This is an increase of $56,523. According to the filing, Berkshire Gas Company seeks, in the final year of its 5 year plan, to increase its overall budget to $4,237,351 from the settlement amount of $3,772,247, an increase of $465,104. The Residential and Low Income budget increase is approximately 12% of the total increase and the Commercial and Industrial s approximately 88%.

[10] Similarly, Bay State makes a proposal to extend its plan through 2009. Bay State Gas Company, D.T.E. 04-39, Aug. 15 Proposal, p. It should have filed its request separately as to allow for review; that proposal should not be reviewed here.

have not addressed these requirements in their filings. Also, increases in customer rates above and beyond the SBC must be found just and reasonable pursuant to G.L. c. 164, §94 and, in addition, electric companies must have proceedings to establish tariffs to collect "other funding" pursuant to the Green Communities Act, all which require notice and hearings, and in some instances, a full adjudicatory process. *Id.* The utilities' proposals contain very little information on sources of new funds and none have provided the Department with the necessary factual foundation to increase spending under the Green Communities Act and ratemaking requirements of G.L. c. 164, § 94.[11]

The lack of practical new funding sources for 2008 does not eliminate the possibility of additional spending to assist with the heating needs for low-income and residential customers. In the past, Companies have overspent on their budgets, sometimes under the direction of DOER and recovered prudent over-expenditures in subsequent annual budgets.[12] Here, however, utilities would take on some of the risk associated with overspending, subject to review in their annual reports on actual program spending and results. Subsequent review of such reports has generally taken into consideration the circumstances in which additional spending was made, and should do so under the circumstances of this proceeding.

*F. NSTAR's and Fitchburg's Tariffs Raise Significant Concerns*

NSTAR Electric and Fitchburg propose to implement a new reconciling rate mechanism to recover incremental energy efficiency ("EE") program costs and a recovery mechanism. New or amended reconciling tariff formulas, such as those proposed by NSTAR Electric and Fitchburg, that will increase rates, must be subject to a hearing before the Department under G.

[11] In addition, the Department should not be approved supplemental spending prior to approval of the 2008 energy efficiency plans themselves.
[12] *See* A memorandum dated November 9, 2005 from DOER requesting that electric companies accelerate spending on lighting to address high energy prices in the winter of 2005.

L. c. 164, § 94 to establish whether rates are just and reasonable rates. *Consumers Organization For Fair Energy Equity, Inc. v. D.P.U.*, 368 Mass. 599, 606 (1975) ("[fuel tariff] clauses were designed precisely to avoid [§94] proceedings ***except where changes were being proposed in the clauses themselves***) (emphasis added). During such a proceeding, the Department considers many factors to balance shareholder and customer interests, including the reduction in risk from the implementation of reconciling mechanisms, to arrive at an appropriate return. *Fitchburg Gas & Electric Light Company*, D.P.U. 07-71, pp. 139-140 (2008). It is impractical to expect this can occur in association with programs to be implemented in the next two months.

In addition to the procedural issues with the NSTAR and Fitchburg tariffs, multiple substantive problems with the tariffs must be addressed. It would be best to sever the review of the tariffs for a later date given that this is an expedited proceeding. In the event that the Department reviews the proposed tariffs now, in connection with the supplemental budget proposals, it should consider a number of deficiencies with the tariffs outlined below. The deficiencies merit the rejection of the tariffs or, in the alternative, require clarification and modification of them.

The Department should reject the Fitchburg and NSTAR Electric's proposed tariffs given the inability of the Companies to provide key data necessary to demonstrate the increase in charges proposed and quantify customer impacts. The Department's own regulations provide that tariffs must be detailed enough to demonstrate the magnitude and effects of the tariff charges on customer rates. *See* 220 CMR 5.03 (providing a companies tariff must "[s]et forth in whatever detail necessary the total amount of the increase or reduction in charges proposed . . . and the effect by comparison with customers' charges under the existing rate schedule . . . indicate the effect on the billings of the customers served under the various rate classifications affected."). The companies have not provided sufficient credible information available to explain details to support a tariff filing, including mechanisms to recover lost based revenues ("LBR") within their tariffs.[13] Without quantification of LBRs it is not possible to determine the increase proposed or the impact on customers. The companies also failed to state within the proposed tariffs those revenues that will be available to offset EE costs charged to customers and estimate the level of recoveries that the companies may seek to collect from customers for the increased winter 2008 spending under the proposal it submitted. Without this detail, the companies cannot comply with the Department's tariff regulations.

In addition, NSTAR Electric has proposed a tariff that would increase distribution rates in a manner not specified by the terms of its settlement approved in D.T.E. 05-85. *See* Settlement, Article 2.1 (the sum of the transition charge and distribution rates shall change only in a manner specified in Article 2 for seven years) (incorporated by reference pursuant to 220 C.M.R. 1.10(3)). Furthermore, in order to add or amend a formula tariff NSTAR would need to submit a rate case filing under G. L. c. 164, § 94. Settlement, Article 2.10 Therefore, the Company has not proposed an appropriate method of recovery in light of the Settlement approved in D.T.E. 05-85.

Alternatively, if the Department does not reject the proposals, it should address additional issues. First, the tariffs would create a uniform per kWh charge EERF but offer no explanation of how revenues and costs will be allocated and reconciled to maintain funding equity in compliance with the provisions of the Chapter 164. Second, the companies have not sufficiently explained their LBR calculation nor provided supporting documentation within the tariff. Third,

[13] Moreover, the companies did not discuss in their tariff proposals would result in recover of LBRs in a manner that would be consistent with the directives set out in the Departments Order issued in its decoupling docket. *See Investigation by the Department of Public Utilities on its own Motion into Rate Structures that will Promote Efficient Deployment of Demand Resources*, D.P.U. 07-50-A, pp. 83-84 (2008) (providing recovery of incremental LBRs for electric companies).

the tariff should provide that the total EEC and EERF will be shown separately on customers' bills so customers understand and appreciate the costs that they are charged. Fourth, there are several places where the language of the tariff should be clearer and more detailed. [14]

NSTAR Electric's proposal contains an added element that must be addressed: a tariff rate that would determine the EERF based on forecasted[15] kilowatt-hours distributed to only those customers that are not in municipalities served by a municipal aggregator providing energy efficiency programs. According to the proposal and the testimony of the Company's witness, the EERF would be charged to all of the Company's customers, including those in the municipals served by the municipal aggregator. Currently this applies to the Cape Light Compact. The witness states that the revenues from the customers in the qualifying municipals would be transferred to that municipality—except for the LBR related revenues. Exhibit NSTAR-HCL, pp. 8-9. It is not clear from the Company's proposal how the application of the tariff formula as proposed will avoid subsidies flowing between customers who reside in the Cape Light Compact's service area and those that do not. It is possible that the Cape Light Compact funding may benefit or suffer from variances in NSTAR's level of costs and revenues from other sources as well as from variance in actual kilowatt-hour deliveries. The Company should be required to provide evidence that this will not occur, or else modify its proposal.

[14] For example, section 1.01 states that the rate would recover total expense amounts booked by the Company. All recoverable expenses and costs should be characterized as prudently incurred expenses/costs as approved by the Department. Another change should be made to section 1.05, Information to be filed with the Department. The tariff should state that the annual filings will include all supporting documentation including vendor/supplier invoices and documentation supporting each category of revenues included in the formula. The Notice provisions of the tariff should reflect the requirement that customers receive notice of the proposed rate at the time it is filed with the Department. This notice should provide meaningful bill impact information. Upon approval of a rate, the Company should be required to immediately make the new rate and bill impact data available publically, as well as through the mail.

[15] All estimated kilowatt-hours and other estimated formula elements should be consistent with estimates used for other purposes and subject to the Department's approval.

The $I_x$ component of the proposed tariff states, "If the energy efficiency funds on December 31, 2008 are over or under the actual spending, that difference shall carry forward as an adjustment, with interest at the customer deposit rate, to the budget in the same customer sector in 2009." It is unclear how this provision would be implemented without the potential to overcharge customers given the various revenue sources (the EEC, FMC and RGGI) and the complexity added by the transfer of funds to the Cape Light Compact. The Department should require that the Company provide a complete illustration of how the tariff calculations and how the tariff mechanism would incorporate and be incorporated in the energy efficiency filings.

Section 1.05 of NSTAR's proposed tariff uses the term "final reconciliation amounts". The nature of reconciling rate mechanisms is that they are never final—errors may be discovered at any time and are corrected. *Fitchburg Gas and Electric Light Co. v. Dep't of Telecomm. and Energy*, 440 Mass. 625, 638 (2004) (Department can take "corrective action in response to an error in the calculation" of a reconciling tariff.) Therefore it is inaccurate to term any element "final." Preferable language would be to use the terms "actual, not estimated amounts." For clarity reconciling tariffs should state that data errors and corrections may be made at anytime as required by the Department.

## III. RECOMMENDED NEXT STEPS

In order to provide increased energy efficiency funding for the potential crisis this winter, the utilities' proposals should have been targeted, simple and in conformance with the Department directives laid out in its July 25 Letter. Because they are not, the Department should take some immediate and direct steps to ensure it meets its statutory obligations as well as provide increased funding to address the challenges posed by the 2008 winter heating season. These steps include:

(i) reject those portions of those proposals that do not relate to reducing residential heating bills this winter;

(ii) require companies to immediately provide the data and information required in all eight categories described in the July 25 Letter;

(iii) reject those portions of the proposals that establish new programs, which need further review;

(iv) clarify that the increased funding for electric energy efficiency programs will not come from the implementation of new tariffs but through FCM, RGGI or overspending to be reconciled in 2009; and

(v) reject Berkshire's proposal and NSTAR Electric and Fitchburg's proposed tariffs.

## IV. CONCLUSION

The Attorney General respectfully requests that the Department adopt the recommendations provided above in the best interest of customers.

Respectfully submitted,
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